

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION
OF THE PACIFIC on behalf of
QUENTIN BERRYMAN,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

INLANDBOATMEN'S UNION
OF THE PACIFIC,

Complainant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 7-07

MEC CASE NO. 20-07

DECISION NO. 535-A- MEC

DECISION ON PETITION FOR
RECONSIDERATION,
AFFIRMING DECISION NO. 535

APPEARANCES

Schwerin, Campbell and Iglitzin, by *Natalie Teague*, Attorney, appearing for the Inlandboatmen's Union of the Pacific.

Robert McKenna, Attorney General, by *David Slown*, Assistant Attorney General, appearing for the Washington State Ferries.

THIS MATTER came before the Marine Employees' Commission (MEC) on December 31, 2007 when the Commission received a Petition for Reconsideration filed by Washington State Ferries (WSF) December 28, 2007. WSF's Petition requested the Arbitrator exclude paragraph 4 of the Decision and Award in MEC Cases 7-07 and 20-07, dated December 21,

2007. On January 3, 2008, the Inlandboatmen's Union (IBU) filed a Petition in Opposition to WSF's Petition for Reconsideration.

After review of WSF's and IBU's petitions, the MEC granted WSF's Petition for Reconsideration and scheduled a hearing to hear evidence on the merits of the respective petitions. A hearing was convened January 15, 2008.

RECORD BEFORE THE COMMISSION

1. Notices of Settlement Conference (February 16, 2007) and of Hearing (May 3, September 6 and 17, 2007).
2. Request for grievance arbitration and complaint charging unfair labor practices—MEC Cases 7-07 and 20-07.
3. IBU and WSF Collective Bargaining Agreement for the period July 1, 2005 through June 30, 2007.
4. Transcript from three days of hearing (May 3, September 6 and 17, 2007.)
5. Exhibits of both parties accepted into evidence during the three days of hearing.
6. WSF and IBU post-hearing briefs of November 14, 2007 completing the record in Cases 7-07 and 20-07.
7. The Arbitrator's Decision and Award, No. 535-MEC, in Cases 7-07 and 20-07.
8. WSF's Petition for Reconsideration of Decision No. 535-MEC.
9. IBU's Petition in Opposition to Reconsideration.
10. Notice of Hearing conducted January 15, 2008.
11. Transcript of Hearing re: Reconsideration and Opposition to Reconsideration of the Decision and Award in MEC Cases 7-07 and 20-07.
12. Exhibits entered into evidence by the parties on January 15, 2008.

RELEVANT PROVISIONS

1. **Decision No. 535-MEC**, entered in MEC Cases 7-07 and 20-07, paragraph 4 of the

Award:

4. WSF is also directed to delay any action relative to Medical Evaluation Questionnaire issues until the meeting referred to above has taken place.

2. **Respiratory Protection Program**, page 12:

Additional Medical Evaluations

After an employee has received the initial medical clearance from the PLHCP and has begun to use the respirator, additional evaluations shall **be necessary only when:**

- **The employer or employee reports signs or symptoms related to their ability to use the respirator, such as shortness of breath, dizziness, chest pains, etc.**
- **The PLHCP stipulates a frequency in the written report.**
- **Observations made during fit testing or program evaluations indicate a need for reevaluation.**
- **The employee has experienced a change in their medical condition that would adversely affect his/her ability to don a respirator.**

Emphasis added.

3. **Settlement Agreement**, dated February 16, 2007, from MEC Cases 7-07 and 14-07, paragraph 3:

The WSF agrees to meet and discuss with the IBU issues related to the current implementation of the Respiration Policy.

POSITIONS OF THE PARTIES

WSF's Position

1. WSF's position is that MEC lacks statutory authority to issue temporary orders or a stay to WSF absent a finding of an unfair labor practice.
2. The MEC has in effect granted IBU's motion to stay WSF's continuing responsibility for employee medical questionnaires necessary for respirator fit testing.

3. The medical questionnaire process is essential to WSF operations. The expeditious completion of medical questionnaires is absolutely necessary to maintain service without disruption.

4. WSF has tried to set up a meeting since January of 2007 without success.

5. Paragraph 4 of the Decision and Award is so vague that it should be eliminated from the Award. It does not provide the necessary guidance to WSF as to how to proceed in the medical evaluation process.

6. The decision in paragraph 4 is completely dependent on a meeting of the parties. The IBU can accomplish their desire to have no new evaluations by being unwilling to meet.

7. The language in the RPP provides the requirement for yearly or periodic medical questionnaires as ordered by the WSFSPC or PLHCP.

8. WSF acted properly in its efforts to protect the employees and the traveling public in its demand for additional medical questionnaires as directed by PLHCP (Healthforce Occupational Medicine).

9. WSF's primary concern in this matter directly relates to its commitment to a safe work force for both the employees and general public. The Arbitrator's decision to stay WSF's ability in this regard is contrary to their ability to do so considering the union's unwillingness to meet with WSF, which in effect frustrates the PLHCP and WSF in doing what is necessary to provide protections for the health of the employees.

10. The MEC should reconsider the decision in MEC Cases 7-07 and 20-07 and delete paragraph 4 of the Decision and Award.

IBU's Position

1. The MEC Decision in Cases 7-07 and 20-07 is completely within its authority. The Commission is authorized and obligated to resolve disputes such as present in this case.

2. During the hearing, the union outlined its position regarding the medical questionnaire and presented evidence during the hearing directly related to the medical questionnaire.

3. The issues involved in MEC Case 7-07 and MEC Case 20-07 were both issues which required a decision by MEC and were incorporated by MEC to avoid additional unnecessary hearings in an effort to provide a timely method to resolve the issues both for WSF and the IBU.

4. Both WSF and the union want a safe work place where both employees and the traveling public are provided the safest and best environment possible aboard the vessels.

5. The union requests MEC to affirm its decision in MEC Decision No. 535 and require the parties to meet as previously agreed in the Settlement Agreement of February 16, 2007 and directed by MEC in paragraph 4 of Decision No. 535.

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**CONCLUSIONS FROM THE RECORD IN MEC CASE NOS. 7-07/20-07 AND
FROM THE HEARING ON RECONSIDERATION**

On the basis of the record, analysis of the history of the Respiratory Protection Program, Interest Arbitration Decision and the February 16, 2007 Settlement Agreement, the Arbitrator makes the following conclusions of fact and law.

1. The 2005-2007 CBA was in full force and effect at the time of the dispute.
2. The Respiratory Protection Program (RPP) HRST SAFE 0100 was in effect at the time of the dispute and continued in effect at the time of the hearing on reconsideration of paragraph 4 in MEC Decision 535.
3. The Respiratory Protection Program (RPP) has been a long standing protracted issue involving lengthy negotiations and discussions between the parties.
4. The RPP contains specific language as to when and under what circumstances additional medical evaluations are required (RPP HRSTSAFE 0100, Manual 12 of 33).
5. The issue involving the medical questionnaire was raised and presented as a matter of dispute between the parties during the hearing of MEC Case Nos. 7-07 and 20-07.

DISCUSSION

MEC has broad authority to remedy disputes between the parties. Prior to the hearing in this case, the parties had agreed to “meet and discuss issues related to the current implementation of the Respiration Policy.” Such meetings had not taken place. Changes in the Respiratory Protection Program HRST SAFE 0100, a negotiated program, required a meeting and discussion between the parties. A change in the frequency of medical questionnaires was one of the issues requiring such a discussion.

The agreed upon language in the RPP regarding “Additional Medical Evaluations” is unambiguous and outlines in four specific footnotes “additional evaluations shall be necessary only when” (emphasis added).

In the case before the Arbitrator, if this matter had not been resolved, then the parties would have had to adjudicate an unfair labor practice filed by the union which would have further delayed or complicated the issue of unilateral change in the RPP.

Also, at the hearing for reconsideration, WSF and IBU agreed to meet and discuss the medical questionnaire issues in compliance with Order 4 of the Decision and Award in MEC Cases 7-07 and 20-07. As a result, such an agreement to meet in compliance with the direction of the Arbitrator tends to make any reconsideration, if once warranted, moot.

DECISION

The matter may be moot at this time, but in any event, the Arbitrator affirms his decision in MEC Cases 7-07 and 20-07, entered December 21, 2007.

DATED this 20th day of March 2008.

MARINE EMPLOYEES’ COMMISSION

/s/ JOHN SWANSON, Arbitrator/Examiner

Approved by:

/s/ JOHN SULLIVAN, Commissioner